

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: AR&T Committee Analyst: LuAnna Hass Bill Number: AB 1742

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: August 20, 2003

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Golden State Scholarshare Trust Tech/Erroneous Refund Interest/Authority To Use New-Hire Registry Info./Min. Franchise Tax/15-Day Disregard Rule/Mandatory E-File Technical

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 2, 2003, STILL APPLIES.

☒

OTHER - See comments below.

☒

## SUMMARY

This bill contains Franchise Tax Board (FTB) sponsored proposals that would:

- renumber the tax law code section for the Golden State Scholarshare Trust,
- simplify the computation of interest on erroneous refunds, and
- clarify FTB's authority to use the information contained in the new-hire and contractor registries maintained by the Employment Development Department (EDD) when collecting on Non-Tax Debt Programs (NTD) administered by FTB.

In addition, this bill contains provisions that would:

- clarify that a corporation's period of inactivity of 15 days or less between the date of incorporation and the beginning of its next annual accounting period would be disregarded as a taxable year,
- allow interest abatement on high-dollar erroneous refunds that are repaid in 30 days, and
- clarify the operative date regarding a provision of a recently enacted law that requires individual tax returns prepared by certain tax practitioners to be filed electronically (e-filed) with FTB.

## SUMMARY OF AMENDMENTS

The August 20, 2003, amendments would clarify a provision of AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228), as discussed in this analysis.

Board Position:

☐ S  
☐ SA  
☐ N

☐ NA  
☐ O  
☐ OUA

☐ NP  
☐ NAR  
☒ PENDING

Legislative Director

Date

Brian Putler

8/27/03

## **POSITION**

Support.

On November 26, 2002, the Franchise Tax Board voted to sponsor the language included in this bill relating to:

- renumbering the tax law code section for the Golden State Scholarshare Trust,
- simplifying the computation of interest on erroneous refunds, and
- clarifying FTB's authority to use the information contained in the new-hire and contractor registries maintained by EDD when collecting on NTD Programs administered by FTB.

Pending position for the provisions that would:

- clarify that a corporation's period of inactivity of 15 days or less between the date of incorporation and the beginning of its next annual accounting period would be disregarded as a taxable year,
- allow interest abatement on high-dollar erroneous refunds that are repaid in 30 days, and
- clarify the operative date regarding a provision of recently enacted law that requires individual income tax returns prepared by certain tax practitioners to be e-filed with FTB.

## **PURPOSE OF THE PROVISION**

The purpose of the amended provision is to clarify the operative date to reflect the original intent of a recently enacted statute.

## **EFFECTIVE/OPERATIVE DATE**

This amended provision would be effective and operative January 1, 2004, and would clarify recently enacted law to provide that the e-file mandate for returns prepared by certain tax preparers would apply to individual income tax returns required to be filed on or after January 1, 2004.

## **ANALYSIS**

### FEDERAL/STATE LAW

Under federal law, income tax returns are in a form prescribed by the Secretary of the Treasury. In addition, federal income tax law has several provisions relating to returns e-filed with the Internal Revenue Service (IRS).

Under current state income tax law relating to e-filing:

- income tax returns must be in a form prescribed by FTB;
- taxpayers must sign written declarations under penalty of perjury; and
- FTB may not require returns of individuals to be on other than paper forms.

A recently enacted state law, AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228), requires all returns prepared by an income tax preparer that prepares more than 100 timely original individual income tax returns during any calendar year, beginning with the 2003 calendar year, to be e-filed in subsequent years if one or more of those tax returns was prepared using tax preparation software. In addition, an income tax preparer that is subject to these requirements is subject to a \$50 penalty for each acceptable individual income tax return that is prepared and then not e-filed, unless the failure to e-file is due to reasonable cause and not due to willful neglect.

### THIS BILL

This provision would clarify the operative date of recently enacted legislation to reflect the original intent of the provision. The clarification would require tax preparers that prepare more than 100 individual income tax returns in a calendar year (beginning with the calendar year starting January 1, 2003) to e-file all returns filed with FTB beginning on or after January 1, 2004.

In addition, this provision makes a technical change to clarify that the requirement to e-file would not apply prior to January 1, 2004.

### IMPLEMENTATION CONSIDERATIONS

The clarification that this provision of the bill provides would allow the department to implement AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228) as it was intended. Upon approval of the Budget Act, the department's budget was reduced to reflect \$1.23 million and 45.5 PYs of savings. Clarification of the operative date to reflect the timeframe intended by the Budget Act is necessary for the department to realize any savings associated with the mandate.

### **LEGISLATIVE HISTORY**

AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228) requires all returns prepared by an income tax preparer that prepares more than 100 timely original individual income tax returns during any calendar year, beginning with the 2003 calendar year, to be e-filed in subsequent years.

### **OTHER STATES' INFORMATION**

Since this provision makes a technical change to an existing law, a review of other states' information would not be relevant.

### **FISCAL IMPACT**

The clarification that this provision of the bill provides would allow the department to implement AB 1756 (Assembly Budget Committee, Stats. 2003, Ch. 228) as it was intended. The Budget Act included a net reduction in FTB's budget of \$1.23 million and 45.5 PYs in fiscal year 2003/04 for the proposal to mandate e-file for tax practitioners that prepare more than 100 acceptable individual income tax returns.

However, the department may not realize the savings included in the Budget Act due to the penalty provision that was recently enacted in AB 1756 (Stats. 2003, Ch. 228), specifying good cause to avoid the penalty includes a taxpayer's *election* not to e-file. The savings above is based on a volume of 2,925,000 returns converting from paper to electronic filing. The conversion of the full volume of returns may not occur due to the election described above. Therefore, the funding that has been deducted from the department's budget may need to be restored to maintain an acceptable level of processing and avoid delays in refunds if those returns are received via paper instead of electronically.

## **ECONOMIC IMPACT**

This provision would not impact state income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

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